

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MANUELA MAREZ)	
Claimant)	
VS.)	
)	Docket Nos. 239,405 & 239,406
THE HAYES COMPANY, INC.)	
Respondent)	
AND)	
)	
WAUSAU UNDERWRITER'S INSURANCE CO.)	
FIREMAN'S FUND INSURANCE COMPANY)	
Insurance Carriers)	

ORDER

Respondent and Wausau Underwriter's Insurance Company (Wausau) appealed Administrative Law Judge Nelsonna Potts Barnes' preliminary hearing Order dated January 21, 1999.

ISSUES

Claimant filed two applications for hearing on November 25, 1998, alleging an August 4, 1997, work-related injury to her right arm and a March 9, 1998, work-related injury to her upper back. The Division of Workers Compensation assigned Docket No. 239,405 to the August 4, 1997, injury and Docket No. 239,406 to the March 9, 1998, injury. The only issue before the Administrative Law Judge at the preliminary hearing held on January 14, 1999, was which insurance company was liable for the payment of the medical treatment for claimant's work-related injuries.

The Administrative Law Judge ordered Wausau to provide the medical treatment for both claims. Respondent and Wausau appeal and the only issue for Appeals Board review is whether the Administrative Law Judge erred in ordering Wausau instead of Fireman's Fund Insurance Company (Fireman's Fund) to provide medical treatment for claimant's injuries.

In their brief, respondent and Fireman's Fund raised the issue of whether the Appeals Board has jurisdiction to review this preliminary hearing issue.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

The first issue the Appeals Board will address is whether it has jurisdiction to review the issue raised by respondent and Wausau on appeal from a preliminary hearing order. Respondent and Wausau admit claimant injured her right arm and upper back while working for the respondent and she is entitled to and is in need of medical treatment. The only issue is which insurance company is liable for payment of medical benefits based on claimant's date of accident.

The Appeals Board only has jurisdiction to review preliminary hearing issues if one of the parties allege the administrative law judge exceeded his or her jurisdiction. See K.S.A. 1998 Supp. 44-551(b)(2)A. In this case, the respondent and Wausau do not make that allegation as the preliminary hearing statute specifically grants the administrative law judge authority to make a preliminary award of medical compensation and temporary total disability compensation to be in effect pending the conclusion of the full hearing on the claim. Additionally, the Appeals Board has jurisdiction to review a preliminary hearing issue if it is a disputed issue identified in K.S.A. 1998 Supp. 44-534a(a)(2). The issue of whether a particular insurance carrier is liable for the payment of workers compensation benefits is not a jurisdictional issue that subjects a preliminary hearing order to review by the Appeals Board. Accordingly, at this juncture of the proceedings, the Appeals Board does not have jurisdiction to review the preliminary hearing issue raised by respondent and Wausau. See Gomez v. Thermal Equipment Corporation, Docket No. 236,062 (December 1998).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that it does not have jurisdiction to review Administrative Law Judge Nelsonna Potts Barnes' January 21, 1999, preliminary hearing Order and this appeal should be, and the same is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of February 1999.

BOARD MEMBER

c: Thomas T. Inkelaar, Wichita, KS
Douglas C. Hobbs, Wichita, KS
Terry J. Torline, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge

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Philip S. Harness, Director